

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Justin Anderson, Evan Schendel, and Brian
Lavergne, on behalf of themselves and all
others similarly situated,

Civ. No. 10-1929 (MJD/JJK)

Plaintiffs,

v.

Timothy Nelson, doing business a Burrito
Union;and Rod Raymond, doing business as
Burrito Union,

Defendants,

and

Just Take Action, Inc., a Minnesota
corporation; Timothy Nelson, doing business a
Burrito Union;and Rod Raymond, doing
business as Burrito Union,

ORDER

Third-Party Plaintiffs,

v.

Action Systems, Inc., a Delaware corporation;
and Tom Diedrich, individually and doing
business as
Hospitality Solutions Duluth;

Third-Party Defendants.

Thomas J. Lyons, Esq., and Trista M. Roy, Esq., Lyons Law Firm, P.A., counsel for Plaintiff.

Joseph J. Mihalek, Esq., Fryberger Buchanan Smith & Frederick, PA counsel for Defendants and
Third-Party Plaintiffs.

Eryk A. Folmer, Esq., and Stephen J. Schlegel, Esq., Stephen J. Schlegel, Ltd.; John D. Kelley,
Esq., and Scott A. Witty, Esq., Hanft Fride PA, counsel for Third-Party Defendant.

The above matter comes before the Court upon the Report and Recommendation of United States Magistrate Judge Jeffrey J. Keyes dated November 4, 2010. No objections have been filed to that Report and Recommendation in the time period permitted. Based upon the Report and Recommendation of the Magistrate Judge, upon all of the files, records, and proceedings herein, the Court now makes and enters the following Order.

IT IS HEREBY ORDERED that:

1. Third-Party Defendant Action Systems, Inc.'s Motion to Dismiss (Doc. No. 13), is **GRANTED**; and
2. Third-Party Plaintiffs are allowed an opportunity to amend their Complaint within thirty days to properly assert any common-law claims for breach of contract, negligence, and negligent and/or fraudulent misrepresentation.

Date: November 23, 2010

s/Michael J. Davis
MICHAEL J. DAVIS
CHIEF JUDGE
UNITED STATES DISTRICT COURT